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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Cashell Enterprises, Inc.

Serial No. 75/773,575

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Enterprises, Inc.

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(Thomas G. Howell, Managing Attorney).

Before Cissel, Seeherman and Hairston, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Cashell Enterprises, Inc. has appealed from the final
refusal of the Trademark Examining Attorney to register
ALAMO TRAVEL CENTER, with the words TRAVEL CENTER
disclaimed, as a service mark for "retail gasoline and
diesel fuel supply services" in Class 35 and "truck washing

and truck repair and maintenance" in Class 37.¹

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark ALAMO BODY & PAINT (with the words BODY & PAINT disclaimed), previously registered for "auto repair services," as to be likely, when used on applicant's identified services, to cause confusion or mistake or to deceive.

The appeal has been fully briefed, but an oral hearing was not requested.

We affirm the refusal of registration.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in **In re E. I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. **Federated Foods, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

¹ Application Serial No. 75/773,575, filed August 12, 1999, and asserting first use and first use in commerce as of February 18, 1997. The application originally included "casino services" in Class 41, but this class, to which no objection was raised, was subsequently divided out of the application so that it could proceed to publication without waiting for a disposition of the present appeal.

Turning first to the services, the Examining Attorney asserts that the auto repair services identified in the cited registration would encompass truck repair services and that, even if they do not, the same establishments which perform automobile repairs render truck repair services. Similarly, he asserts that establishments offer auto repair services and sell gas and diesel fuel. In support of his position, he has submitted a number of third-party registrations showing that a single entity has registered its mark for both applicant's and the registrant's identified services. See, for example, Registration No. 2,427,053 for AF DON'T CHOOSE YOUR COLLISION SHOP BY ACCIDENT for, inter alia, automobile and truck repair, painting and finishing; Registration No. 2,401,674 for FLEETLUBE for maintenance and repair of trucks and automobiles; Registration No. 2,377,257 for RE and design for maintenance and repair of trucks and automobiles; Registration No. 828,898 for, inter alia, automotive repair, and fuel services primarily for the trucking industry.

Third-party registrations which individually cover a number of different goods or services and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a

single source. See **In re Albert Trostel & Sons Co.**, 29 USPQ2d 1783 (TTAB 1993).

We need not reach the question of whether auto repair services by definition include truck repair services because it is clear from these third-party registrations that the repairing of automobiles and the repairing of trucks are services which may emanate from the same source and be rendered under a single mark.

As for applicant's retail gasoline and diesel fuel supply services, the identification is not limited as to customers, and thus the services must be deemed to include retail gasoline and diesel fuel supply services rendered to automobile drivers as well as truckers. The third-party registrations demonstrate that auto repair services and gasoline fuel supply services may emanate from a single source. Moreover, it is common knowledge that many gasoline stations, which sell gasoline and diesel fuel, also offer auto repair services.

Applicant argues that the services are different because its services "are offered at a truck stop along Interstate 80 and are directed exclusive to truckers," while the registrant "offers exclusively auto body and paint services in conventional body shops in Texas." Brief, pp. 3-4. The problem with this argument is that the

question of likelihood of confusion must be determined on the basis of the goods and/or services as they are identified in the subject application and registration, not on what the evidence shows the goods and/or services to be. See **Canadian Imperial Bank of Commerce v. Wells Fargo Bank, NA**, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); **In re William Hodges & Co., Inc.**, 190 USPQ 47 (TTAB 1976). Thus, for purposes of our analysis, we must assume that applicant's services may be rendered nationwide, including in Texas, and that its retail gasoline and diesel fuel supply services are rendered to automobile drivers as well as truckers, and we must also assume that the registrant's auto repair services include mechanical repair as well as auto body and painting, and that they may be rendered nationwide as well.

For the same reasons, applicant's arguments as to the differences in the customers of its and the registrant's services must fail.

This brings us to a consideration of the marks. Both begin with the word ALAMO, followed by words which are merely descriptive (TRAVEL CENTER and BODY & PAINT) and which have been disclaimed. Although marks must be considered in their entirety, it is well established that there is nothing improper in stating that, for rational

reasons, more or less weight has been given to a particular feature of a mark. See **In re National Data Corp.**, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). In this case, the word ALAMO is clearly the dominant feature of both marks. In view of the descriptiveness of the words which follow this term, it is the word ALAMO which has the source-identifying significance. Although the descriptive words TRAVEL CENTER and BODY & PAINT in the respective marks create some differences in the marks, the presence of these words is not sufficient to distinguish the marks. That is, consumers will not regard these descriptive words in the marks ALAMO TRAVEL CENTER and ALAMO BODY & PAINT as indicating that the services emanate from different sources; rather, they will view the descriptive words as simply indicating the different services offered under the mark ALAMO by a single source.

Applicant has argued that its mark is not strong, asserting that "a search of registered and pending trademarks revealed the existence of sixty (60) other federal registrations and applications for marks containing the word ALAMO.... Brief, pp. 4-5. Applicant never made these registrations or applications of record, so this statement has virtually no probative value, as we have no idea as to the number of registrations (applications are

evidence only of the fact that they have been filed), the manner in which the term ALAMO appears in the marks, or the goods or services for which the ALAMO marks are registered. Applicant has also asserted that ALAMO is widely known and associated with rental cars, an assertion which the Examining Attorney has accepted as fact, so we will do likewise. However, we cannot, on the basis of the use of ALAMO for rental cars, conclude that registrant's mark ALAMO BODY & PAINT is such a weak mark for auto repair services that its scope of protection would not extend to protect it from the use of ALAMO TRAVEL CENTER for such closely related services as truck repair and gasoline fuel supply.

Given the fact that applicant's and the registrant's services are offered to the public at large, and applicant's acknowledgement that such customers "are unlikely to be making careful, sophisticated purchasers," brief, p. 4, we find that consumers are likely to believe that ALAMO TRAVEL CENTER for, inter alia, truck repair and retail gasoline fuel supply services, emanate from the same source as auto repair services rendered under the mark ALAMO BODY & PAINT.

Finally, we will touch briefly, as does applicant, on two additional duPont factors. We agree with applicant

that there is no evidence in this record as to the fame of the registrant's mark, and we have not treated it as such in making our determination. As for the lack of evidence of likelihood of confusion, we note that such evidence is normally difficult to obtain, and also that we have not had an opportunity to hear from registrant as to its experience on this factor. More importantly, if applicant is correct as to the different geographic areas in which it and registrant render their respective services, there may not, as of this point, have been an opportunity for confusion to occur. However, because registrant's registration is not geographically restricted, and applicant does not seek an unrestricted registration, that situation could change in the future.

Decision: The refusal of registration is affirmed.